

ARLEY C. BURKE

IBLA 80-938

Decided December 10, 1980

Appeal from a decision of the California State Office, Bureau of Land Management, holding the Richer Than Mother placer mining claim (CA MC 71753) abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Location -- Mining Claims: Recordation

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

APPEARANCES: Arley C. Burke, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Arley C. Burke appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated August 20, 1980, declaring the Richer Than Mother placer mining claim (CA MC 71753) abandoned and void. BLM stated that appellant's notice of location, together with the filing fee, was returned since it was not filed within 90 days after the date of location of the claim as required by the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b).

BLM found that the claim was located on May 4, 1980. Because appellant's certificate of location was not filed with BLM until August 14, 1980, more than 90 days later, the certificate was returned to appellant.

In his statement of reasons, appellant says that it was his error that he filed late because he made a mistake as to the correct filing date.

[1] Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after October 21, 1976, must file with BLM a copy of the official record of the notice of location within 90 days after the date of location, failing which the claim shall be declared abandoned and void under 43 CFR 3833.4(a). Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), appeal filed Civ. No. 79-2255 (10th Cir. Nov. 21, 1979); Lee Resources Management Corp., 50 IBLA 131 (1980); Carl Dowler, 44 IBLA 192 (1979); M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978); and Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978), aff'd, Northwest Citizens for Wilderness Mining, Inc. v. Bureau of Land Management, Civ. No. 78-46-M (D. Mont. June 19, 1979).

Appellant's failure to meet the requirements for timely filing cannot be waived. In R. Wade Holder, supra at 170, the Board stated:

The FLPMA, supra, and the regulations which implement it contain no provisions allowing for a waiver of the 90-day requirement or for the granting of extensions. On the contrary, the consequences of failing to timely file notices of location are clearly stated in 43 CFR 3833.4(a): "The failure to file such instruments as are required by secs. 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claims, mill site, or tunnel site and it shall be void." Since there is no authority for an exception to enforcement of the 90-day deadline, it must be enforced. See Belton E. Hall, 33 IBLA 349 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

